

AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1171**

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**Introduced by Assembly Member Linder**

February 27, 2015

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An act to add Chapter 6.7 (commencing with Section 6970) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1171, as amended, Linder. Construction Manager/General Contractor method: regional transportation agencies: projects on expressways.

Existing law generally sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by local agencies for public works contracts. Existing law authorizes the Department of Transportation, the Santa Clara County Valley Transportation Authority, and the San Diego Association of Governments to use the Construction Manager/General Contractor project delivery method for transit projects within their respective jurisdictions, subject to certain conditions and requirements.

This bill would authorize regional transportation agencies, as defined, to use the Construction Manager/General Contractor project delivery method, as specified, to design and construct certain projects on expressways that are not on the state highway system if the projects are developed in accordance with an expenditure plan approved by voters as of January 1, 2014. *This bill would require, for any project interfacing with a state highway system, the regional transportation agency and the Department of Transportation to enter into a cooperative agreement, as specified.* The bill would require specified information provided to

a regional transportation agency to be verified under oath. By expanding the scope of ~~an~~ *the* existing ~~crime~~, *crime of perjury*, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 6.7 (commencing with Section 6970) is  
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3  
4 CHAPTER 6.7. CONSTRUCTION MANAGER/GENERAL  
5 CONTRACTOR METHOD: REGIONAL PROJECTS ON EXPRESSWAYS

6  
7 6970. (a) This chapter provides for an alternative procurement  
8 procedure for certain transportation projects performed by a  
9 regional transportation agency.

10 (b) The Construction Manager/General Contractor method  
11 allows the regional transportation agency to engage a construction  
12 manager during the design process to provide input on the design.  
13 During the design phase, the construction manager provides advice  
14 including, but not limited to, scheduling, pricing, and phasing to  
15 assist the agency to design a more constructible project.

16 (c) The Legislature finds and declares that utilizing a  
17 Construction Manager/General Contractor method requires a clear  
18 understanding of the roles and responsibilities of each participant  
19 in the process. The Legislature also finds and declares that  
20 cost-effective benefits are achieved by shifting the liability and  
21 risk for cost containment and project schedule to the construction  
22 manager and by permitting the coherent phasing of projects into  
23 discrete contract increments.

24 6971. For purposes of this chapter, the following definitions  
25 apply:

26 (a) "Construction manager" means a partnership, corporation,  
27 or other legal entity that is able to provide appropriately licensed

1 contracting and engineering services as needed pursuant to a  
2 Construction Manager/General Contractor method contract.

3 (b) “Construction Manager/General Contractor method” means  
4 a project delivery method in which a construction manager is  
5 procured to provide preconstruction services during the design  
6 phase of the project and construction services during the  
7 construction phase of the project. The contract for construction  
8 services may be entered into at the same time as the contract for  
9 preconstruction services, or at a later time. The execution of the  
10 design and the construction of the project may be in sequential  
11 phases or concurrent phases.

12 (c) *“Interfacing with the state highway system” has the same*  
13 *definition as that term is defined in Section 6820.*

14 (e)

15 (d) “Preconstruction services” means advice during the design  
16 phase, including, but not limited to, scheduling, pricing, and  
17 phasing to assist the regional transportation agency to design a  
18 more constructible project.

19 (d)

20 (e) “Project” means the construction of ~~a highway, bridge, or~~  
21 ~~tunnel~~ *an expressway that is not on the state highway system,*  
22 *including work performed within the state highway right-of-way*  
23 *or airspace or upon property and airspace acquired for*  
24 *construction of a state highway.*

25 (e)

26 (f) “Regional transportation agency” means an entity as  
27 designated pursuant to paragraph (4) of subdivision (i) of Section  
28 6820.

29 6972. (a) A regional transportation agency may utilize the  
30 Construction Manager/General Contractor method of procurement  
31 to design and construct projects ~~on expressways that are not on~~  
32 ~~the state highway system~~ if the projects are developed in  
33 accordance with an expenditure plan approved by voters as of  
34 January 1, 2014.

35 (b) The entity responsible for the maintenance of the local streets  
36 and roads within the jurisdiction of the expressway shall be  
37 responsible for the maintenance of the expressway.

38 (c) *For any project interfacing with the state highway system,*  
39 *both of the following shall apply:*

1 (1) The authorization in subdivision (a) shall not include the  
2 authority to perform construction inspection services, which shall  
3 be performed by the Department of Transportation consistent with  
4 Section 91.2 of the Streets and Highways Code.

5 (2) The regional transportation authority and the Department  
6 of Transportation shall enter into a cooperative agreement  
7 reflecting the roles and responsibilities assigned by law. The  
8 cooperative agreement shall also include an issue resolution  
9 process with a primary objective to ensure the project stays on  
10 schedule and issues between parties are resolved in a timely  
11 manner.

12 6973. Construction Manager/General Contractor method  
13 projects authorized pursuant to Section 6972 shall be governed  
14 by the same process, procedures, and requirements as set forth in  
15 Section 6703, subdivision (a) of Section 6704, and Sections 6705  
16 to 6708, inclusive, except that any reference to “department” shall  
17 mean the regional transportation agency.

18 ~~6973. (a) Construction Manager/General Contractor method~~  
19 ~~projects shall progress as set forth in subdivision (a) of Section~~  
20 ~~6703, except that any references to “department” shall mean the~~  
21 ~~regional transportation agency.~~

22 ~~(b) For each request for qualifications (RFQ), the regional~~  
23 ~~transportation agency shall generate a final list of qualified persons~~  
24 ~~or firms that participated in the RFQ prior to entering into~~  
25 ~~negotiations on the contract or contracts to which the RFQ applies.~~

26 ~~(c) (1) For each contract included in the RFQ, the regional~~  
27 ~~transportation agency shall enter into separate negotiations for the~~  
28 ~~contract with the highest qualified person or firm on the final list~~  
29 ~~for that contract. However, if the RFQ is for multiple contracts~~  
30 ~~and specifies that all of the multiple contracts will be awarded to~~  
31 ~~a single construction manager, there may be a single negotiation~~  
32 ~~for all of the multiple contracts. The negotiations shall include~~  
33 ~~consideration of compensation and other contract terms that the~~  
34 ~~regional transportation agency determines to be fair and reasonable~~  
35 ~~to the department. In making this decision, the regional~~  
36 ~~transportation agency shall take into account the estimated value,~~  
37 ~~the scope, the complexity, and the nature of the professional~~  
38 ~~services or construction services to be rendered. If the regional~~  
39 ~~transportation agency is not able to negotiate a satisfactory contract~~  
40 ~~with the highest qualified person or firm on the final list, regarding~~

1 compensation and on other contract terms the regional  
2 transportation agency determines to be fair and reasonable, the  
3 regional transportation agency shall formally terminate negotiations  
4 with that person or firm. The regional transportation agency may  
5 undertake negotiations with the next most qualified person or firm  
6 on the final list in sequence until an agreement is reached or a  
7 determination is made to reject all persons or firms on the final  
8 list.

9 (2) ~~If a contract for construction services is entered into pursuant~~  
10 ~~to this chapter and includes preconstruction services by the~~  
11 ~~construction manager, the regional transportation agency shall~~  
12 ~~enter into a written contract with the construction manager for~~  
13 ~~preconstruction services under which contract the regional~~  
14 ~~transportation agency shall pay the construction manager a fee for~~  
15 ~~preconstruction services in an amount agreed upon by the regional~~  
16 ~~transportation agency and the construction manager. The~~  
17 ~~preconstruction services contract may include fees for services to~~  
18 ~~be performed during the contract period provided, however, the~~  
19 ~~regional transportation agency shall not request or obtain a fixed~~  
20 ~~price or a guaranteed maximum price for the construction contract~~  
21 ~~from the construction manager or enter into a construction contract~~  
22 ~~with the construction manager until after the regional transportation~~  
23 ~~agency has entered into a services contract. A preconstruction~~  
24 ~~services contract shall provide for the subsequent negotiation for~~  
25 ~~construction of all or any discrete phase or phases of the project.~~

26 (3) ~~A contract for construction services shall be awarded after~~  
27 ~~the plans have been sufficiently developed and either a fixed price~~  
28 ~~or a guaranteed maximum price has been successfully negotiated.~~  
29 ~~In the event that a fixed price or a guaranteed maximum price is~~  
30 ~~not negotiated, the regional transportation agency shall not award~~  
31 ~~the contract for construction services.~~

32 (4) ~~The regional transportation agency is not required to award~~  
33 ~~the construction services contract.~~

34 (5) ~~Construction shall not commence on any phase, package,~~  
35 ~~or element until the regional transportation agency and construction~~  
36 ~~manager agree in writing on either a fixed price that the regional~~  
37 ~~transportation agency will pay for the construction to be~~  
38 ~~commenced or a guaranteed maximum price for the construction~~  
39 ~~to be commenced and construction schedule for the project. The~~  
40 ~~construction manager shall perform not less than 30 percent of the~~

1 ~~work covered by the fixed price or guaranteed maximum price~~  
2 ~~agreement reached. Work that is not performed directly by the~~  
3 ~~construction manager shall be bid to subcontractors pursuant to~~  
4 ~~Section 6705, except that any references to “department” shall~~  
5 ~~mean the regional transportation agency.~~

6 ~~6974. Contracts awarded pursuant to this chapter shall be valid~~  
7 ~~until the project is completed.~~

8 SEC. 2. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.